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2 District of Nevada

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6 *Attorneys for the United States*

7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**

9 UNITED STATES OF AMERICA,

Plaintiff,

10 vs.

11 ROBERT LAMON POLK,

12 Defendant.

Case No.: 2:16-cr-00055-KJD-NJK

**Government's Motion to Extend  
Time to File a Response to  
Defendant's Motion to Vacate, Set  
Aside or Correct Sentence [ECF Nos.  
46, 52]**

13  
14 Certification: This motion is timely.

15 Pursuant to Local Rule IA 6-1, the United States submits this first motion for  
16 extension of time to file the government's response to Defendant's motion under 28 U.S.C.  
17 § 2255. The response is presently due on January 16, 2023, per this Court's order dated  
18 December 15, 2022. ECF No. 52. The United States respectfully requests a **28-day**  
19 **extension of time, to and including February 13, 2023**, to respond to Polk's motion to  
20 vacate his sentence. In support of this request, undersigned counsel states the following:

21 1. On January 31, 2017, pursuant to a plea agreement with the government, Polk  
22 pleaded guilty to two counts of felon in possession of a firearm under 18 U.S.C. §§ 922(g)(1)  
23  
24

1 and 924(a)(2).<sup>1</sup> In May 2017, this Court sentenced him to a total of 77 months'  
2 imprisonment.<sup>2</sup> Polk did not appeal.

3 2. On September 9, 2019, Polk filed a motion to vacate sentence under 28 U.S.C.  
4 § 2255.<sup>3</sup> On December 15, 2022, the Court ordered the government to respond to Polk's  
5 motion by January 16, 2023.<sup>4</sup>

6 3. Undersigned counsel is the newly-appointed chief of the appellate division at the  
7 U.S. Attorney's Office for the District of Nevada. In addition to handling criminal appeals,  
8 the appellate division is responsible for litigating post-conviction motions, including § 2255  
9 motions.

10 4. With the former appellate chief's departure on December 16, 2022, the appellate  
11 division is down one full-time AUSA (from five to four). This circumstance has increased  
12 the workload of the remaining appellate AUSAs.

13 5. Undersigned counsel has assigned the responsibility for this matter to himself, based  
14 on the temporarily heightened workloads of appellate division AUSAs. I was not involved  
15 in the case in the district court, and I will have to rely exclusively on my own review of the  
16 record because the trial AUSA who handled the case in 2017 is no longer with the office.

17 6. Undersigned counsel assures the Court that he has been diligent and does not seek  
18 this extension for purposes of delay. Based on my review of the motion and docket items,  
19 undersigned counsel believes he can respond to Polk's claims without obtaining an affidavit  
20 or affidavits from Polk's defense counsel. If I conclude that such affidavit(s) are necessary, I  
21 will promptly file a request for an order directing defense counsel to provide them.

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23 <sup>1</sup> ECF No. 31 (plea agreement).

24 <sup>2</sup> ECF No. 39 (judgment).

<sup>3</sup> ECF No. 46.

<sup>4</sup> ECF No. 52.

1           WHEREFORE, based on the foregoing, the government respectfully requests an  
2 extension to and including February 13, 2023, to file its response to Polk's motion to vacate  
3 sentence.

4           Dated this 30th day of December, 2022.

5                           JASON M. FRIERSON  
6                           United States Attorney

7                           s/Robert L. Ellman  
8                           ROBERT L. ELLMAN  
9                           Assistant United States Attorney

**CERTIFICATE OF SERVICE**

I certify that on December 30, 2022, I electronically filed the foregoing Government's Motion with the Clerk of the Court by using the CM/ECF system. I also caused a copy of this motion to be sent to the defendant at the following address:

Robert Lamon Polk  
3200 Sabrina Court  
Las Vegas, NV 89117

Dated: December 30, 2022

s/ Nicole Vazquez  
NICOLE VAZQUEZ  
Paralegal

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **DISTRICT OF NEVADA**

3                   UNITED STATES OF AMERICA,

4                                   Plaintiff,

5                                   vs.

6                   ROBERT LAMON POLK,

7                                   Defendant.

Case No.: 2:16-cr-00055-KJD-NJK

**Order**

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9  
10   Based upon the pending motion of the government, and good cause appearing,

11                   **IT IS HEREBY ORDERED** that the government shall have until February 13,  
12   2023, to file its response to Defendant Robert Polk's Section 2255 motion to vacate  
13   sentence; and

14                   **IT IS FURTHER ORDERED** that if government counsel concludes an affidavit  
15   from Polk's defense counsel is necessary to respond to the ineffective-assistance-of-counsel  
16   claims, the government will promptly file a request for an Order directing defense counsel to  
17   provide that affidavit.

18  
19   DATED this 4th day of January, 2023

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22                                   \_\_\_\_\_  
23                                   UNITED STATES DISTRICT JUDGE  
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